

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID PHILLIPS,

Plaintiff,

v.

ASBESTOS CORPORATION LIMITED, et  
al.,

Defendants.

No. C 13-5655 CW

ORDER GRANTING  
MOTION TO REMAND  
(Re: Docket No.  
27)

Plaintiff David Phillips moves to remand this case back to San Francisco superior court. Defendant Crane Co. opposes. The Court finds this motion suitable for disposition without oral argument pursuant to Civil Local Rule 7-1(b). Having considered the papers submitted by the parties, the Court GRANTS Phillips' motion to remand.

FACTUAL BACKGROUND

On December 20, 2011, Phillips filed suit in San Francisco superior court against Crane and other defendants, asserting negligence and other state law claims for causing him asbestos-related injuries. Specifically, Phillips worked at several locations containing asbestos, including the Mare Island Naval Shipyard, and now suffers from asbestos-related pleural disease and asbestosis, serious lung diseases that are associated with the inhalation of asbestos fibers. In his complaint, Phillips expressly waived claims against Crane relating to his exposure to asbestos at military and federal government jobsites, or from U.S. military vessels, aircraft, or equipment. Complaint ¶ 6.

1 On December 6, 2013, Crane removed this action to federal  
2 court. Phillips now moves to remand the suit back to San  
3 Francisco superior court.

#### 4 DISCUSSION

5 Crane argues that it properly removed this action under the  
6 federal officer removal statute, which provides that an action may  
7 be removed by "any officer of the United States or any agency  
8 thereof, or person acting under him, for any act under color of  
9 such office." 28 U.S.C. § 1442(a)(1). Suits against federal  
10 officers are exceptional in that they may be removed to federal  
11 court despite the nonfederal nature of the complaint. Jefferson  
12 County v. Acker, 527 U.S. 423, 431 (1999). Although removal under  
13 § 1441 is strictly construed, with any doubt resolved in favor of  
14 remand, the removal rights of § 1442 are broader than those  
15 provided by § 1441 because it is important to the federal  
16 government to protect its officers. See Gaus v. Miles, Inc., 980  
17 F.2d 564, 566 (9th Cir. 1992); Durham v. Lockheed Martin Corp.,  
18 445 F.3d 1247, 1252 (9th Cir. 2006). The Ninth Circuit instructs  
19 that there is a "clear command from both Congress and the Supreme  
20 Court that when federal officers and their agents are seeking a  
21 federal forum, we are to interpret section 1442 broadly in favor  
22 of removal." Durham, 445 F.3d at 1252 (quoting Arizona v.  
23 Manypenny, 451 U.S. 232, 242 (1981)).

24 Thus, the fact that Phillips' complaint expressly disavows  
25 any federal claims is not determinative. Rather, removal is  
26 proper under the federal officer removal statute if the removing  
27 party: (1) demonstrates that it acted under the direction of a  
28 federal officer; (2) raises a colorable federal defense to the

1 plaintiff's claims; and (3) demonstrates a causal nexus between  
2 the plaintiff's claims and the defendant's acts performed under  
3 color of federal office. Mesa v. California, 489 U.S. 121, 124-  
4 25, 134-35 (1989); Fung v. Abex Corp., 816 F. Supp. 569, 571-72  
5 (N.D. Cal. 1992).

6 Here, Crane claims that the federal defense of military  
7 contractor immunity shields it from liability. This doctrine  
8 provides, "Liability for design defects in military equipment  
9 cannot be imposed, pursuant to state law, when (1) the United  
10 States approved reasonably precise specifications; (2) the  
11 equipment conformed to those specifications; and (3) the supplier  
12 warned the United States about the dangers in the use of the  
13 equipment that were known to the supplier but not to the United  
14 States." Boyle v. United Technologies Corp., 487 U.S. 500, 512  
15 (1988). The justification for this defense is that liability for  
16 independent contractors performing work for the federal government  
17 constitutes a uniquely federal concern. Id. at 505.

18 In the present case, however, Phillips has expressly  
19 disclaimed and waived any claim arising out of or related to any  
20 asbestos exposure aboard federal jobsites and navy vessels. This  
21 removes any claims to which military contractor immunity might act  
22 as a defense. The Court sees no reason not to hold Phillips to  
23 this waiver; this same waiver language was found to justify remand  
24 in many cases in this district with very similar facts.<sup>1</sup> The

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25 <sup>1</sup> See, e.g., Pratt v. Asbestos Corp., Ltd., 2011 WL 4433724  
26 (N.D. Cal.); Dobrocke v. Allis-Chalmers Corp. Product Liability  
27 Trust, 2009 WL 1464153 (N.D. Cal.); Madden v. A.H. Voss Co., 2009  
28 WL 341377 (N.D. Cal.); Westbrook v. Asbestos Defendants, 2001 WL  
902642 (N.D. Cal.).

1 waiver justifies remand. If Phillips later attempts to reverse  
2 course, and is allowed to do so by the state court despite his  
3 express waiver, Crane can remove once again.<sup>2</sup>

4 IT IS SO ORDERED.

5 Dated: 2/26/2014

  
CLAUDIA WILKEN  
United States District Judge

United States District Court  
For the Northern District of California

24 \_\_\_\_\_  
25 <sup>2</sup> See 28 U.S.C. § 1446(b)(3) ("if the case stated by the  
26 initial pleading is not removable, a notice of removal may be  
27 filed within thirty days after receipt by the defendant . . . of a  
28 copy of an amended pleading, motion, order or other paper from  
which it may first be ascertained that the case is one which is or  
has become removable.").